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The Legal Power of Executorial Title in a Notary's Deed Concerning Debt Recognition in Banking Practice

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ABSTRACT
This research is motivated by the use of notarial deeds in banking practice because notarial deeds have the position of authentic deeds. One form of using a notarial deed in banking practice is the use of a notarial deed in the form of a debt acknowledgment deed. The legal research method used in this research is normative juridical research which is research carried out or aimed only at written regulations with the nature of descriptive analysis research which is a method that functions to describe or provide an overview of the object being studied. The data source used is secondary data with quantitative data analysis. The results of this research are that the legal strength of the executorial title in the debt acknowledgment deed aligns the debt acknowledgment deed with the court decision. The executorial title or irah-irah gives the authority to carry out executions without having to go through a court decision, but the execution is carried out by asking for court assistance or what is called fiat execution. With the existence of an executorial title which aligns the debt acknowledgment deed with a court decision that has legal force permanent (inkarcht van gewidje), the authority of the notary in including the executive title in the debt acknowledgment deed is regulated in Article 57 UUJN, the person with the authority to issue the grosse deed is the notary. The implementation of Executorial Title in Banking Practice is carried out on Debtors who are in default and cannot fulfill their obligations to pay debts according to the time period agreed in the credit agreement and become bad debts, then the bank as creditor has the right to recover its receivables by carrying out fiat execution on collateral objects that have been encumbered with mortgage rights.

Keywords:
Banking, Executorial Title, Recognition of Debt

INTRODUCTION

The use of notarial deeds in banking practice is because notarial deeds have the status of authentic deeds. Article 1867 of the Civil Code stipulates that an authentic deed is a deed made in a form determined by law, made by or in the presence of an authorized official at the place where the deed was made. One form of using a notarial deed in banking practice is the use of a notarial deed in the form of a debt acknowledgment deed. Acknowledgment of debt in a notarial deed is often used by banks as a tool to confirm that a certain party has a debt to the bank. Thus, a notarial deed becomes a strong basis for banks to collect debts or carry out executions if the debtor fails to fulfill his obligations according to the agreement. A debt acknowledgment deed is a document containing confirmation which acknowledges that the debtor is obliged to pay the creditor the amount stated in the debt contract and within the term agreed time. In the event that a notarial deed of acknowledgment of debt is made, the notarial deed must be followed by a Grosse deed

Grosse deed is a notarized copy of proof of acknowledgment of debt that the notary gives to the creditor. One of the peculiarities of a grosse deed is that the head of the deed contains irahs; "For the sake of justice based on belief in the Almighty God" which means the grosse of the debt acknowledgment deed has executorial

power. If the debtor is in default, the creditor can apply for execution directly to the head of the district court without filing a lawsuit first. A notarial deed of acknowledgment of debt is a document that has perfect evidentiary power or in evidentiary law is called probatio plena. The Deed of Debt Acknowledgment in credit transactions is an important document which is useful as proof that a legal relationship has or has occurred between the creditor and the debtor. There has been a legal relationship between the creditor and the debtor, this legal relationship is an aspect of rights and obligations Article 55 paragraph (2) of the law concerning Notary Public Positions states that a gross deed of acknowledgment of debt made before a Notary is a copy of a deed that has executorial power which can be used by creditors as the basis for the right to collect their receivables if the debtor fails to pay his debt with the executorial power attached to the gross deed of acknowledgment of debt. This can make it easier for banks to avoid difficulties in executing guaranteed goods

However, in practice, when a debtor defaults, the creditor does not immediately execute the guarantee of the debt acknowledgment deed which has been made in grosse form. The creditor instead makes a statement of willingness to relinquish rights to the collateral that is guaranteed and is signed by the debtor. In fact, with a deed of acknowledgment of debt made before a Notary, a copy of which can be issued by the Notary and is called a Grosse Deed of Acknowledgment of Debt. The gross deed itself is a notarial deed which has a special nature and character by being able to execute collateral immediately when the debtor is in default. Apart from that, often in practice debt acknowledgment deeds which have an executorial title are sued by defaulting debtors in order to prevent the execution of debt guarantees due to a lawsuit in court so that this hampers the legal certainty of debt acknowledgment deeds which have an executorial title.

METHOD

This research uses a normative juridical research type and the nature of this thesis research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related, Source of legal materials used in this research is secondary data, namely data obtained from official documents, books or all forms of research relating to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations relating to the title Executorial in Notarial Deeds Concerning Debt Recognition in Practice Banking. The data analysis technique used is qualitative data analysis, namely a research procedure that produces analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

RESULTS AND DISCUSSION

Results

All forms of providing credit from banks to debtors, in essence what occurs is a loan and borrowing agreement as regulated in the Civil Code (KUH Perdata) or Burgerlijk Wetboek, Articles 1754 to Article 1769 BW. With the distribution of funds to the community in the form of credit which is accompanied by risks in terms of credit repayment by the debtor, this shows how important the function of credit agreements

is to support development and therefore encourages us to assess whether the credit agreement from a legal perspective fulfills the necessary elements. so as to guarantee that the credit can be returned to the Bank after the agreed period In general, guarantees or collateral in banking institutions can be divided into material guarantees (zakelijk zekerheid) and individual guarantees (personlijk zekerheid). In banking, the position of material collateral is collateral that has a strategic position, this is based on the fact that when providing credit facilities in large amounts, collateral in the form of land and/or buildings has a dominant position because material collateral in the form of land provides protection and legal certainty for creditors and has economic value that benefits the Bank in the event of bad credit. The distribution of funds to the public in the form of credit is not always returned by the borrower on time or according to what has been agreed. There are those who are not on time, there are those who stall and there are even those who are no longer able to repay the loan. Credit that is not paid on time or is in arrears can be said to be bad credit, because the funds that were originally provided by the bank to be used evenly by the community have stopped circulating.

This credit problem not only affects the bank's own efforts in circulating its capital, but also harms other parties. This is because if the credit is paid by the borrower correctly and in full, the bank can distribute it back to other prospective borrowers. If the borrower does not repay on time, the credit cycle will stall. This bad credit is a significant obstacle in banking institutions, therefore it is one of the matters regulated by banking provisions contained in Law Number 7 of 1992 which has been amended through Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 which regulates handling of bad credit by a special institution (Asset Management Unit). Mortgage rights guarantee institutions can provide legal certainty regarding the binding of collateral with land and objects related to land as collateral or collateral in banking institutions since the promulgation of the Law on "Guarantee rights over land and objects related to land". So that if bad credit occurs, the Mortgage Guarantee Institution is expected to be able to provide a solution for resolving bad credit for the Banking Institution. If the debtor defaults or breaks his promise in fulfilling his credit repayment obligations in accordance with the credit agreement, and creates bad credit, then the bank can make efforts to resolve the bad credit by using the Mortgage Rights Guarantee Institution for land owned by the bank as the collateral recipient.

Debtors who are in default and unable to fulfill their obligations to pay debts according to the time period agreed in the credit agreement and become bad debts, the bank as creditor has the right to recover their receivables by carrying out execution on collateral objects that have been encumbered with mortgage rights. The execution of mortgage rights is carried out based on Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. The bank carries out the execution of mortgage rights based on Article 20 of Law No. 4 of 1996 (UUHT), which determines three ways of executing mortgage rights, namely:

a. sell the object of the mortgage right through a public auction at the sole discretion of the first mortgage right holder (Article 6 UUHT);
b. selling mortgage rights objects through public auction based on executorial title (Article 14 paragraph 2 UUHT); And

c. selling mortgage rights privately based on an agreement between the giver and recipient of mortgage rights (Article 20 paragraph 2 UUHT).

Of these three alternatives, in practice the bank always prioritizes and most often carries out the execution of private sales in accordance with Article 20 paragraph (2) UUHT to be carried out first. The sale of an object of mortgage rights by means of private sale can occur if there is an agreement between the giver of the mortgage right and the holder of the mortgage right, with the aim of obtaining the proceeds from the sale of the object of collateral at the highest price which benefits all parties, both creditors and debtors, and from a legal perspective on This underhand sale is the easiest and simplest legal procedure.

In practice, the process of selling mortgage rights objects does not go through an announcement process in the mass media as required in Article 20 paragraph (3) UUHT. If it turns out that the private sale cannot be carried out, then the bank will choose another execution alternative, namely by parate execution or based on the executorial title of the mortgage certificate and this is what the bank always chooses as the execution method. Parate Execution is carried out by the bank directly executing the mortgage object without having to ask for fiat or a decision from the head of the district court. In this way, the bank can carry out the execution of the mortgage right object with a faster time, more economical costs, and a simpler legal procedure, compared to execution based on the executorial title of the mortgage right certificate which requires fiat from the district court and takes a relatively longer time. , costs are more expensive and legal procedures are more complex.

The execution parate cannot be implemented, if it turns out that a confiscation, dispute or legal claim has arisen filed by a third party (in the sense of not a legal claim filed by the debtor himself, the debtor's husband or wife), whether in the form of a civil, criminal or PTUN lawsuit at the time of execution of mortgage rights is in progress. With these legal problems, the execution process cannot be carried out, because the Auction Office is unwilling or unable to carry out an auction for the collateral object.

So for the bank the next option is to carry out execution based on the executorial title of the mortgage certificate. Execution of mortgage rights objects through gross execution of mortgage certificate deeds which have executorial title is carried out based on Article 20 paragraph 1 letter b UUHT. The bank first submits an application to the chairman of the district court to obtain a court fiat, and then carry out the execution of the mortgage object which is the credit collateral. In other words, without a fiat from the court, the Auction Office cannot carry out a public auction for the mortgage object. Apart from the judge's decision (verdict), writings that meet certain requirements as in Article 224 HIR can also be executed, namely:

a. Grosse notarial debt securities (grosse deed of acknowledgment of debt), which is carried out without mortgage collateral.
b. Mortgage collateral objects and grosse mortgage deeds (certificates) made against mortgage collateral

What is meant by having "power like a judge's decision" in Article 224 HIR is executive power. This can be seen from the second sentence which states "if the right to exercise is not exercised voluntarily, then the exercise is carried out on orders and under the leadership of the Chief Justice of the State Court".

From the explanation above, in practice it shows that in order to carry out the execution of the object of mortgage rights based on the executorial title of the certificate of mortgage rights, the bank as the applicant for execution must first request a fiat from the local district court, so that in carrying out this execution all stages in the execution based on an order and under the leadership of the chairman of the district court, this requires a relatively longer time and is more expensive than execution based on the Execution Parate.

In the gross implementation of the debt acknowledgment deed, the debtor must be in default and there must be a fiat of execution from the Head of the State Court. In practice, submission of gross execution of a debt acknowledgment deed is carried out either orally or in writing. The request for execution is addressed to the Chairman of the District Court and then the party concerned pays the execution fee determined by the clerk of the District Court

Creditors who have executorial title in collecting debts from debtors have privileged rights by law, this is because the guarantees specifically mentioned in the grosse deed will take priority over other creditors. It is said to have a special position compared to other creditors, because apart from having the right of precedence, the only authentic deed which is not a court decision has an executorial title. So the special feature of the grosse debt acknowledgment deed is due to the "phrase for the sake of justice based on belief in Almighty God" because with these words, it has the same power as the power of a court which has permanent legal force. In this case, according to the law, confiscation execution can be carried out in order to fulfill the debtor's debts without having to first file a lawsuit in court.

The executorial power of the grosse deed gives a special position to the creditor in terms of carrying out its execution, if the debtor defaults in carrying out the performance promised. Creditors in collecting debts from debtors have special rights by law, this is because the guarantees specifically mentioned in the grosse deed will take priority over other creditors. It is said to have a special position compared to other creditors, because apart from having the right of precedence, the only authentic deed which is not a court decision has an executorial title. So the special feature of the grosse debt acknowledgment deed is due to the "phrase for the sake of justice based on belief in the Almighty God" because with these words, it has the same power as the power of a court which has permanent legal force. In such cases, according to the law, confiscation of execution can be carried out in order to fulfill the debtor's debts without having to first file a lawsuit in court.

The gross deed does not need to be proven, so what is stated in it must be considered true, unless there is opposing evidence. Differences in perception regarding the legal position of the gross deed of recognition between judicial institutions as law implementers and banking practitioners revolve around their respective points of view in different perspectives. different. The judiciary as the institution implementing material law considers that the grosse deed of acknowledgment of debt only has executorial power over a fixed amount of debt, while the banking institution which has an interest in the existence of the grosse deed requires executorial power without any burden or other conditions. Because the aim of regulating grosse debt acknowledgment deeds is to assist financial institutions (banking) in repaying debts due to debtor default. With differences in interpretation regarding the essence of the existence of a gross debt acknowledgment deed in

contract law, especially banking credit agreements, it will make it difficult for potential creditors to release their money to debtors.

Regarding the method of applying for grosse execution of a deed in practice, it is carried out either orally or submitted in writing, the request for execution is addressed to the chairman of the district court concerned. Then the party concerned must pay execution costs, the amount of which is determined by the clerk of the District Court. In practice, executorial confiscation is carried out by the Substitute Registrar of the District Court with two witnesses, this is as regulated in Article 197 paragraphs 2 and 6 HIR. Armed with an order in the form of a determination from the Chairman of the District Court, the Substitute Registrar or Substitute Bailiff and assisted by two witnesses, they depart for the location where the object of the dispute is located in order to carry out the executorial confiscation. This confiscation can be carried out on both movable and immovable property by making a confiscation report.

The implementation of the judge's decision or execution in civil cases is carried out by a Substitute Registrar or Substitute Bailiff led by the Chairman of the District Court with due regard to humanity, this is regulated in Article 33 paragraph 3 of Law No. 14 of 1970 as well as Article 195 paragraph 1 and Article 197 paragraph 2 HIR. After the executorial confiscation is carried out, if there is no other order from the Chairman of the local District Court then the execution will be carried out. In practice, orders to suspend execution often come from the High Court and also the Supreme Court of the Republic of Indonesia for certain reasons. The Chairman of the High Court, through a decree of execution, orders the Registrar or Bailiff to carry out the execution, and the person concerned notifies the local official where the execution will be carried out.

Discussion

A Notary, Judge, Bailiff at a court, and a Civil Registry Officer are public officials appointed by law, thus notarial deeds, judge's decision letters, verbal process letters made by court bailiffs and marriage documents made by Civil Registry Employees are Authentic Deeds. If two people come to a notary, explain that they have entered into an agreement and ask the Notary to make a deed, then this deed is a deed made in front of a Notary, the Notary only listens to what is desired by both parties facing him and places the agreement. made by two people in a deed. Basically, the form of a notarial deed containing deeds and other things that are constant by the notary, in general must follow the provisions stated in the applicable legislation regarding it, including the Indonesian Civil Code and the Law. - law on the position of Notary, a Deed will have an authentic character, if the deed has evidentiary power between the parties and against third parties, so that it is a guarantee for the parties, that the acts or statements presented provide evidence that cannot be removed.

The Notary is appointed by the Minister of Law and Human Rights, to be able to carry out his position with the desired effect, the power of attorney from the State given to the Notary gives him the authority to make a deed as a value of great trust, that is why the deed has more evidentiary power than testimony from people strengthened by oaths If an authorized official makes a deed, then the deed is an authentic deed and its authenticity continues even after he dies. His signature on the deed still has force, even though he can no longer provide information regarding

events at the time the deed was made and if the official is temporarily dismissed or fired from his position, then the deeds still have the power of authenticity, but the deeds The deed must have been made before the dismissal or temporary dismissal was imposed. A debt acknowledgment deed made by a notary is an authentic deed that has legal force as perfect evidence for the parties, both creditors and debtors.

The debt acknowledgment deed made by the notary is a unilateral statement from the debtor which is formulated by the notary into a notarial deed and signed by the parties, both creditor and debtor, witnesses and also the notary concerned. If the authenticity of a deed of acknowledgment of debt made by a notary is doubtful, then the implementation of the deed can be suspended in accordance with the provisions of the Civil Code, which in this case applies at the first level the provisions regarding Actori incumbit probation, meaning "a person who doubts the authenticity of something." the notarial deed must be able to prove it."

The person who wants to make an agreement must express his will and willingness to bind himself and agree. So an agreement gives rise to rights and obligations regarding goods or assets for the parties who make an agreement and enter into an agreement, expressing their will and willingness, here showing the voluntary nature of the parties. One example of an agreement that is often made is a debt and receivables agreement. In practice, this agreement often occurs in society, where initially the parties have agreed to fulfill their rights and obligations. Regarding debt and receivable agreements, the party who has the right to sue is called the debtor or creditor, while the party who is obliged to fulfill the claim is the debtor.

The grosse of the debt acknowledgment deed made by a notary has definite legal force as Article 55 paragraph (2) of the Law on the Position of Notary states that the grosse of the debt acknowledgment deed made before a Notary is a copy of the deed which has executorial force which can be used by creditors as a basis. the right to collect receivables when the debtor fails to pay the debt. With the executive power attached to the grosse debt acknowledgment deed, it can make it easier for banks to avoid difficulties in executing the collateral. Grosse execution of this deed is an exception to the principle of execution which states that execution can only be carried out against court decisions that have permanent legal force (inkracht van geweisjde).

The value of the strength of evidence attached to an authentic deed, if the formal and material requirements are met, then the deed immediately meets the minimum threshold of proof without the aid of other evidence. Immediately valid as evidence of an authentic deed, the deed is immediately attached to the value of evidentiary strength, namely perfect (volledig) and binding (bindende). The judge is obliged and bound to consider the authentic deed to be true and perfect, must consider what is postulated or stated to be sufficiently proven. The judge is bound by the truth of the deed, so it must be used as a basis for consideration in making a dispute resolution decision Article 224 HIR or 258 RBg allows the execution of a grosse form of deed which contains the words "For the sake of justice based on belief in the Almighty God", because the grosse form of the deed has the same force as a judge's decision which has obtained permanent legal force.

n general, the gross debt acknowledgment deed is regulated in Article 224 HIR/258 RBg. Grosse deed itself is a notarial deed that has special properties and characteristics when compared to other authentic deeds. The meaning of Grosse

deed itself is a copy or quotation (with exception) from the minutes of the deed (original manuscript) which (above the title of the deed) contains the following sentence: For the sake of Justice Based on Belief in One Almighty God and below it is included the following sentence: Awarded as First Grosse by stating the name of the person, at whose request, the Grosse was awarded and the date on which it was awarded.

Article 57 UUJN, the authority to issue grosse deeds is a notary. It is further stated that the Grosse Deed, Copy of the Deed, Excerpt from the Notarial Deed, or legalization of a private letter attached to the deed stored in the Notarial Protocol, can only be issued by the Notary who made it, a Substitute Notary, or the legal holder of the Notarial Protocol. grosse deed has the right to refuse to make the grosse deed submitted. This is done by a notary if the gross deed requested is in conflict with the provisions of the applicable laws and regulations. Article 224 HIR and Fatwa of the Supreme Court dated 16 April 1985 Number 213/229/85/II/Um-Tu//Pdt are the main sources for implementing procedures for making debt acknowledgment deeds.

A debt acknowledgment deed made by a notary not only proves that the parties have carried out a legal act of borrowing and borrowing money with interest, and the legal act is a legal act that actually occurred as explained in the notarial deed. This interpretation is taken from Article 1871 of the Civil Code where it is stated that an authentic deed does not only provide perfect evidence about something contained therein as a mere narrative, apart from just something being said that is directly related to the main content of the deed. , from this article everything that is the main content of the deed is taken, namely everything that is expressly stated by those who signed the deed.

The practice of granting credit to banking institutions is often tied to a principal guarantee and additional collateral, which is sometimes formulated in the form of a debt acknowledgment deed either in the form of an authentic (notarial) deed or in the form of a private deed. The two forms of debt acknowledgment deed, whether debt acknowledgment in the form of a private deed or in the form of a notarial deed, are unilateral debt acknowledgment deeds. This means that the acknowledgment of the debt is made by the debtor as the debtor, which contains promises that if the debtor fails to carry out the agreed performance, the creditor can execute the objects specifically mentioned in the deed. Regarding the debt acknowledgment deed made by the debtor before a notary, its legal force is perfect

CONCLUSION

The implementation of Architect Performance Standards is regulated in Law No. 6 of 2017 concerning Architects which states that architect performance standards must pay attention to security, safety and aesthetics of the living environment in the implementation of the design of a building. The Architect's Legal Responsibility for Design and Building Errors That Result in Material Losses to the Building Owner is regulated in Article 65 of the Construction Services Law where the Architect as one of the construction service providers is responsible for design and building errors and can be held accountable both civilly and criminally under the Act. Architects and the Architect's Code of Ethics, Architects who carry out work that does not comply with architectural work standards which results in design errors can be given

administrative sanctions, namely revocation of the architect's professional license and registration.

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